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Supreme Court of the United States

OCTOBER TERM, 1924.

No. 412.

COMPAGNIE INTERNATIONALE DE PRODUITS ALIMENTAIRES S. A., *Appellant*,

vs.

THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN OF THE UNITED STATES OF AMERICA, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES OF AMERICA, *Appellees*.

BRIEF FOR APPELLANT.

STATEMENT.

This case comes to this Court on appeal from a judgment of the Court of Appeals of the District of Columbia, filed the 23d day of May, 1924, affirming a decree of the Supreme Court of the District of Columbia which sustained a motion of defendants to

dismiss plaintiff's bill of complaint. The Court of Appeals affirmed the decree of the Supreme Court of the District of Columbia expressly on the decision by itself in the case of *Behn, Meyer & Company, Ltd. v. Miller, et al.*

The action is the usual one under the Act known as "Trading with the Enemy," section 9, to recover the proceeds of certain stock, a sum alleged to be in excess of $540,000, which appellant says belonged to it, a neutral corporation, and which was seized and sold by the Alien Property Custodian as belonging to four certain persons, Carl, Robert, Richard and Walter Franck, who were determined to be enemies not holding a license granted by the President.

There are no opinions in the courts below.

The facts are as follows:

The Bill of Complaint.

The allegations of the bill, which are admitted by the motion to dismiss, show that the plaintiff below, appellant here, is a corporation organized and existing under and by virtue of the laws of the Confederation of Switzerland, having its principal office and place of business in Switzerland and no office, place of business or agent within the United States. It was organized and doing business prior to the beginning of the World War in Europe (Rec. p. 2) and was, and is, incorporated in strict compliance with the laws of Switzerland and its corporate acts registered there, constituting public records of that nation (Rec. p. 5.)

Among its assets, the corporation was the owner,

prior to July 1, 1918 and prior to the beginning of the World War in Europe, of a block of stock amounting to 6,250 shares of a New York corporation, incorporated in 1912, known as Heinr. Franck Sons, Inc. The Swiss corporation had not been resident within, or incorporated within, and had not done business within any part of the territory (including that occupied by the military and naval forces) of any nation with which the United States was at war since April 6, 1917, or any ally of any such nation. It has never been proclaimed by the President as included within the terms "enemy" or "ally of enemy" as defined by act of Congress, and no finding has ever been made that it was an enemy or ally of enemy, either by the President aforesaid, or by the Alien Property Custodian or by any other authority. (Rec. p. 3.)

By demand, dated July 1, 1918, addressed to Heinr. Franck Sons, Inc., Flushing, New York, the Alien Property Custodian found and determined that Carl, Richard, Robert and Walter Franck were enemies not holding a license granted by the President, and required the conveyance from said corporation of 6,248 shares of its stock, the right, title and interest of which were alleged to be held by Carl, Richard, Robert and Walter Franck (and one share held by T. Ellet Hodgskin and one share alleged to belong to Richard Franck) (Rec. p. 5). By supplementary demand, dated March 25, 1919, the Alien Property Custodian again determined that the 6,248 shares belonged to Carl, Richard, Robert, and Walter Franck, that these

persons were enemies not holding a license granted by the President, and he thereby seized such shares of stock and required the same to be transferred to him. (Rec. p. 6.)

By supplementary demand of April 28, 1919, the Alien Property Custodian made similar findings regarding the four Francks and determined that certain trade-marks and trade-mark registrations therein specified, and the good-will and business belonging to said trade-marks, belonged to or were held for the benefit of enemies comprising the firm of Heinr. Frank Sohne of Ludwigburg, Germany, and seized the trade-marks and the certifications of registration thereof, and the good-will and business thereof, and required them to be conveyed to him. (Rec. p. 6.)

The said stock and trade-marks, registration, business, and good-will were thereupon conveyed to the Alien Property Custodian as required by him, and were subsequently sold, together with patents and trade-marks, to one David McMorran. (Rec. p. 6). There were likewise seized by the Alien Property Custodian certain dividends due but unpaid, upon the said stock, or which thereafter were declared thereon. The proceeds of the sale and the dividends collected on the stock amounted to upwards of $540,000. (Rec., pp. 5-6.)

The property and assets seized by the Alien Property Custodian were, as a matter of fact, prior to and at the time of such seizure, the property of the Swiss corporation, Compagnie Internationale De Produits Alimentaires, S. A., as was shown to the Alien Property Custodian and as admitted by the motion to

dismiss, (which has the effect of a demurrer); and were *not* the property of the four Francks or of Heinr. Frank Sohne of Ludwigburg, Germany. (Rec. p. 5.)

No demand, or notice of demand for the property and assets, however, was ever made or served upon the Swiss corporation nor any one representing it, and no due or legal determination was made at the time of seizure or at any time, under the Trading with the Enemy Act or otherwise, that the Swiss Corporation was an "enemy" or "ally of enemy." (Rec. p. 7.) The bill charges that the taking over and seizure of the property of the complainant were illegal and void in that the complainant was not an "enemy" or "ally of enemy." (Rec. p. 7.)

The bill further shows the history of the organization of the corporation known as Heinr. Franck Sons, Inc., the total amounts of its capital stock (6,250 shares) and the distribution, prior to 1914, of the shares of stock (with the exception of two in the names of individuals to qualify them as directors of the American corporation) to the Swiss corporation. (Rec. p. 3.) The bill also shows the history of the organization of the appellant corporation and the original amount and apportionment of its capital stock. (Rec. p. 4.)

Paragraph 9 of the bill sets forth in detail the percentage of the capital stock of the Swiss corporation owned by enemies and the proportion, less than a majority, known to be in the hands of non-enemies at the time of the seizure of the property of the corporation (Rec. p. 5), and also the proportion of the

capital stock distributed among neutrals (more than 50%) at the time of the filing of the bill. Also there is shown the distribution of bond holdings, which was slightly over 49% neutral and 4% unknown at the time of the seizure and at the time of the filing of the bill 59% Swiss. (Rec. p. 5.)

It is further shown by the bill that because of depression in business at the end of the year the appellant company wrote off from its capitalization a large sum, and later, further sums, and by reason thereof its capital has become impaired and the remaining property of the corporation, including the stock or the proceeds thereof, seized by the Alien Property Custodian, constitutes a fund for the benefit of its creditors and bondholders. (Rec. p. 7.)

Due application for return of the property or proceeds was made under Section 9 a of the Trading with the Enemy Act and was denied. (Rec. p. 6.)

The theory of the bill is that the appellant corporation, being a corporation of a neutral country, not doing business in enemy territory, is within the express definition of the statute (Sec. 9 and the reenacted subsection a of Section 9 requiring the return of non-enemy property) a person (and corporation) not an enemy or ally of an enemy within the meaning of the Trading with the Enemy Act, and is entitled to the recovery of its property taken and held by the Alien Property Custodian under the mistaken finding that it was the property of other persons who alone were found and declared to be enemies.

The motion to dismiss proceeds upon the contention

that the appellant, notwithstanding it is a corporation of a neutral country not residing in enemy territory, and not doing business in enemy territory, and not declared an enemy or ally of enemy, is nevertheless forbidden to sue to recover its property because it does not come within the terms of subsection (b) of the Trading with the Enemy Act as amended in 1920 and 1923, which permits the return of property to any corporation outside the United States entirely owned by subjects of states other than Germany and Austria-Hungary, and to any corporation outside of Germany or Austria-Hungary, the control of more than 50% of the interest or voting power of which was vested in subjects of states other than Germany or Austria-Hungary.

Assignment of Errors.

The assignments of error are set forth at pages 26 and 27 of the Record; none have been abandoned; the ones directly raising the questions to be discussed are the following: Assignment No. 2. By this assignment the appellant raises the contention that the language of the statute itself gave appellant the right to the return of its property.

Assignment No. 3. By this assignment the appellant raises the contention that the seizure was mistaken, unlawful and void, because it appears on the face of the proceedings that the property was seized as belonging to four certain persons declared enemies; and was not taken as the property of appellant, and appellant was not declared an enemy or ally of enemy.

Appellant's Contentions.

The appellant contends:

(1) That a proper construction of Section 8 (subsection "a") of the Trading with the Enemy Act, leads to the conclusion that the appellant is not an "enemy" and is entitled to sue for the return of its property:—

(a) That such construction is authorized and required by the language of the section.

(b) That any ambiguity as to the meaning of that language is dispelled by a consideration of the history of the statute and the meaning, in municipal and international law, of the terms used.

(2) Subsection (a) alone of Section 9 of the Act governs, and the right there given to a neutral non-enemy corporation was not taken away, or intended to be taken away, by subsection (b), premitting the return by the President, with or without application, of the property of certain corporations classed in a list of former "enemies" whose property was released after the war.

(3) That the moment it appears that the seizure was wrongful and not in accordance with the law, it will be set aside, before which no objections of the appellees will be considered.

ARGUMENT.

I.

The Statutes Governing.

The statutes to be considered in deciding the issues in this case are certain sections of the "Trading with the Enemy" Act of October 6, 1917, and certain amendments of June 5, 1920, and March 4, 1923, relating to the return of property taken and held by the Alien Property Custodian. In the original "Trading with the Enemy" Act of October 6, 1917, the general subject of the return of non-enemy owned property was provided for in Section 9. It reads as follows, omitting matter not material:

> Sec. 9. "That any person, not an enemy, or ally of enemy, claiming any interest, right or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian hereunder, and held by him or by the Treasurer of the United States * * * may file with the said Custodian a notice of his claim under oath and in such form and containing such particulars as the said Custodian shall require; and the President, if application is made therefor by the claimant, may, with the assent of the owner of said property and of all persons claiming any right, title, or interest therein, order the payment, conveyance, transfer, assignment or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or of the interest therein to which the President shall determine said claimant is entitled * * *. If the President shall not so order within sixty days after the filing of such application, or if the claim-

ant shall have filed the notice as above required and shall have made no application to the President, said claimant may, at any time before the expiration of six months [subsequently extended] after the end of the war, institute a suit in equity in the district court of the United States for the district in which such claimant resides, [or in the Supreme Court of the District of Columbia, by Act of July 11, 1919], or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant) to establish the interest, right, title or debt claimed, etc."

The word "person" as used in the beginning of the section, was specifically defined in Section 2 of the Act by the statement that the word "person" should be deemed to mean, among others, a "corporation."

The words "enemy" and "ally of enemy" were also specifically defined in Section 2, as follows:

> "That the word 'enemy' as used herein shall be deemed to mean for the purposes of such trading and of this Act—
>
> (a) * * * Any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory. * * *
>
> The words 'ally of enemy' as used herein shall be deemed to mean—
>
> (a) * * * Any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory."

The above Section 9 was the provision in the Act that protected the rights of all *non-enemy* owners, whose property may have been mistakenly seized or may have been improperly held.

After the war, and on June 5, 1920, Congress extended the list of those whose seized property might be released by authorizing the return of property to certain described classes of claimants and omitting the requirement of "non-enemy" ownership. This was done by amending Section 9 and adding some subsections, and several numbered subdivisons of one subsection, in which a list of the added classes was given.

But the rights of "non-enemy" owners were still protected and continued. This was accomplished by a separate subsection, which reenacted the original Section 9 in the same terms, numbering it Section 9 (a).

The subsection which contained the list of additional claimants was numbered (b), reading as follows:

> "(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—
>
> "(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property

hereunder a citizen or subject of any such nation or State or free city; or

"(2) A woman who at the time of her marriage was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States, in the prosecution of said war, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(3) A woman who at the time of her marriage was a citizen of the United States (said citizenship having been acquired by birth in the United States), and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman either directly or indirectly from any subject or citizen of Germany or Austria-Hungary; or

"(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was, at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

"(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the

time of the return of his money or other property hereunder living within the United States; or

"(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungry and is so owned at the time of the return of its money or other property hereunder; or

"(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

"(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government—

then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian; *Provided,* That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become *ipso facto* or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or

may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said property, or compensation or damages arising from the capture of such property by the President or the Alien Property Custodian: *Provided further, however*, That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein."

Section 9 was again amended by the Act of March 4, 1923, known as the "Winslow Act." That amendment again extended the list of claimants who might recover property. It again re-enacted the provisions of Section 9, and added to the subdivisions of Section 9 (b) several paragraphs, among which was paragraph 11.

> "(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary or Austria-Hungary: *Provided,* however, That this subsection shall not affect any rights which any citizen or subject may have under paragraphs (1) of this subsection;—"

II.

Construction of the Statutes.

This case is to be determined by a construction of the original Trading with the Enemy Act passed during the war, October 6, 1917, and the two amendments of Section 9 of the Act, one passed in 1920 and the other in 1923.

The intent of Congress is, of course, the guiding principle in the construction. That intent is to be found

in the language used, interpreted in the light of the purpose sought to be accomplished, the situation before Congress, the settled meaning of words as fixed by judicial decisions before the passage of the Act, and the well settled rules of construction of amendments and supplements to laws.

Did Congress intend by the Trading with the Enemy Act and the amendments referred to that a corporation of a neutral country (as a legal entity apart from its stockholders) ***not an "enemy" or "ally of enemy"*** not doing business in enemy territory, and not declared an "enemy," should not be permitted now to recover property belonging to it, seized and held by the Alien Property Custodian under the mistaken assumption that it was the property of *others* who were enemies?

The original "Trading with the Enemy" Act of 1917 provided in Section 9 for the return under certain circumstances of all non-enemy owned property seized by the Alien Property Custodian and specified who might secure the return of such property, stating that "any person" "not an enemy or ally of enemy" claiming any property seized by the Alien Property Custodian, could file a claim for return of property, and if such claim was not allowed, could institute a suit in equity to establish the ownership of the property and secure an order of transfer to the claimant of the property. The provision used the expression "any person," but these words were specifically defined in Section 2 of the Act as including any "corporation." In specifying what persons (including corporations) might recover property, the Act used only the words "not an enemy or ally of enemy," but these words,

"not an enemy or ally of enemy," were specifically defined in Section 2 of the Act by setting forth what would constitute a person or corporation an "enemy" and what would constitute a person or corporation an "ally of enemy." In addition to the description of individual "enemies or allies of enemies," it was there provided that any "corporation incorporated within such (enemy) territory or incorporated within any country other than the United States and doing business in such territory" would be deemed to be an enemy, and so where the word "enemy" was used in the statute, it would mean such corporation; and further that any "corporation incorporated within a country of an ally of an enemy or doing business within such (enemy) territory" should be deemed an "ally of enemy," and so wherever the words "ally of enemy" were used, it would mean such corporation.

The statute, with the statutory definition of words, therefore, clearly and unequivocally provided, so far as the argument here is concerned, that any foreign corporation not incorporated within the territory of any nation with which the United States is at war or the ally of such nation and not doing business in the territory of any nation with which the United States is at war nor in the territory of an ally of such nation, whose property, or any part thereof, shall have been delivered to the Alien Property Custodian may file notice of claim for such property, and if the return of such property is not ordered may (within the time limited) institute a suit in equity, and secure transfer of the property to the claimant.

The statute thus provided as definitely and clearly

as if enacted in the language stated. There were no exceptions, or modifications, in any way material to this discussion. Of course, a claimant presenting a claim as a corporation must have been a *bona fide* corporation and must have owned the property prior to the passage of the Act, but there was no other limitation, either express or implied.

What did Congress mean by the word "corporation" used in the statute? Did Congress mean a corporation as a legal entity, separate and apart from its shareholders, as was the settled meaning of the word "corporation" as interpreted in all statutes prior to the enactment of the Trading with the Enemy Act, or did it mean something different, some new and strange definition never theretofore signified by the use of the word "corporation," to wit: The body of shareholders or enough of them to constitute the majority or part of them or all of them? There is nothing whatever either in the other provisions of the Trading with the Enemy Act, the circumstances of the enactment or the purposes of the Act to indicate that Congress intended to use the word "corporation" in any other than its ordinarily accepted sense, and there is everything to indicate most clearly that the word was intended to be used in its ordinarily accepted sense. Words in a statute are presumed to be used with their ordinary meaning, especially if that meaning has been well settled by judicial decisions interpreting prior Acts, and words in a statute will be held to have their ordinary meaning unless there is a clear intent to the contrary by specific definition or plain exposition in

other parts of the same statute. These are well settled rules of construction.

It must be conceded, therefore, that when Congress provided for recovery of property by a corporation of a neutral country, it meant the corporation as an entity, and did not mean stockholders. So, the appellant company, being a Swiss corporation and not doing business during the war in enemy territory, and being a corporation organized in good faith and having acquired in good faith, prior to the passage of the Trading with the Enemy Act, the property in question, was entitled under Section 9 of the Act to file its claim and upon establishment of its ownership of the property to have the property returned, or if not returned in that way, to secure its return by bill in equity.

That was the fixed right of the appellant Company under the original Trading with the Enemy Act. That right had already been given. Did Congress intend to withdraw it by subsequent enactments passed several years after the war and which provided that among those who were by the original Act deemed "enemies" or "allies of enemies," certain of them might nevertheless, under those amendments recover their property, and by including among those who might so recover certain corporations of a particular character and ownership?

The first and most natural assumption, in answering this question, is that Congress would not intend the taking or holding of the property of neutrals, several years after the war, to a *greater extent* than it intended to take or hold during the war emergency. This is especially true when it is seen that the general pur-

pose of the post-war enactments is clearly and obviously a partial *distribution* of the property in the hands of the Alien Property Custodian, and a plain *addition* to the list of those who might get their property back by the giving of rights to many different classes of former owners of alien property who theretofore, and by the original Act, had no right to return of their property.

The amendment of 1920 was clearly dealing with the right of recovery of those who had no right to recover under the original act because they were enemies or allies of enemies within the terms of that original act. These amendments enlarged the right of recovery. The original act required return of property only to those who were not "enemies" or "allies of enemies." The amendments allowed return of property to certain classes of claimants even though they had been "enemies" or "allies of enemies"—for example, to a wife who was an "enemy" under the original act because of marriage to a German; to a citizen of any of the states that were part of Germany or Austria but which, after the war, had become citizens of the new states set up by the Peace Treaty. Among such classes were foreign corporations incorporated in neutral countries, or even in Germany, which could not have claimed under the original act because they would be "enemies" or "allies of enemies," but could claim under the amendments "if entirely owned" by neutrals; or (under the amendment of 1923), if more than 50 per cent of the stock was owned by neutrals, and the corporation had not been incorporated in Germany.

These extensions of the right to recover property were not intended, as shown by the very purpose and spirit in which they were enacted, to *restrict* the claimants who might secure return of their property under the original Act, when it was mistakenly seized or ought not to have been seized. The original Act provided, very properly and necessarily, that property taken as the property of enemies should, of course, be returned, if the fact was that the owner was *not an enemy or ally of an enemy.* The post-war amendments dealt with the return of property even though correctly seized, as enemy property and not under mistake. This was in pursuance of a policy naturally more liberal toward the release of seized property than the original war measure of 1917. The contrast is plain and conspicuous. There can be, therefore, no presumption of intent on the part of Congress by the post-war amendments, to repeal the war provisions for the return of property mistakenly seized, nor to revise and restrict the list of *non-enemy* claimants allowed to recover under the original Act.

The amendments of 1920 and 1923 dealt primarily with the cases of former "enemies" or "allies of enemies" who were given a right nevertheless (as a matter of grace) to secure the return of property in the hands of the Alien Property Custodian. They were not dealing with the definition of "enemy" or "ally of enemy" used in the original Act. Those words had already been specifically defined. That definition stood. It was not repealed directly, or by implication, because there were no definitions in the amendments. But even if there had been definitions of particular

expressions in the new amendments these would not repeal specific definitions particularly given of expressions in the original Act.

And yet the contention against the right of a neutral corporation to recover its property necessarily involves the proposition that because Congress, after the war, gave a right to a foreign corporation even though an enemy, to recover property if the corporation was entirely owned by neutrals, or if the majority of its stock were owned by neutrals, therefore the definition of a neutral non-enemy corporation entitled to claim under the original Act, was necessarily to be a corporation entirely owned, or 50 per cent owned, by neutrals. To state this contention is to answer it. The argument that Congress intended to *withdraw* from *non-enemy* corporations rights which had been given even in the drastic war measure of the Trading with the Enemy Act because Congress passed statutes several years after the war extending even to certain *enemy* corporations the right to recover their property, cannot commend itself as a natural construction of acts of Congress, aside from the fact that such construction is not supported by any language in the enactments.

To test the matter: Congress provided in the original Trading with the Enemy Act, by its definition of "corporation" and by the settled interpretation of the words used, that a corporation as a legal entity and without regard to shareholders could, if a corporation of a neutral country and not doing business in enemy territory, recover property that had been seized by the Alien Property Custodian as the prop-

erty of others but which turned out to have been owned by the neutral corporation; the post-war amendments provided that certain corporations, whether "enemies" or not, could recover their property if entirely owned, or majority owned, by neutrals, and though the property had been properly seized originally as enemy property. There was in this no repeal; there was merely an enlargement,—the giving of that in addition to that which had been given before. The amendments would have had precisely the same character and effect if the original statute had specifically added to the word "corporation" the words, "regardless of stock ownership" or had defined a corporation in any other way. In other words, the post-war amendments did not need to repeal the definitions in the earlier statutes in order to be effective; therefore, no repeal by implication could be inferred.

The conclusion is inevitable that the amendments of 1920 and 1923 do not affect, alter, modify or repeal the rights, whatever they were, specifically granted to neutral, non-enemy corporations. If, under the original Trading with the Enemy Act, a non-enemy corporation meant the non-enemy character of the legal entity (apart from its stockholders) to be determined by the place of incorporation and the places of doing business, then the right of a non-enemy, neutral corporation to recover its property exists today just as much as it did before the amendments of 1920 and 1923.

The settled interpretation of the word "corpora-

tion" defined by judicial decisions prior to the enactment of the Trading with the Enemy Act, the situation before Congress when the Trading with the Enemy Act was enacted, and the purpose and scope of the amendments of 1920 and 1923, all confirm this construction.

III.

Settled meaning of the word "Corporation" used in original section 9 and re-enacted section 9-a.

That the word "corporation" used in written instruments or in statutes means the corporate entity distinct from the stockholders is so conclusively determined by judicial decisions that it is hardly necessary to cite any authorities on the point. It has several times been so held or assumed in the decisions of this court.

National Park Bank v. Remsen, 158 U. S. 338, 344.
Pullman Palace Car Co. v. Mo. Pac. R. R. Co., 115 U. S. 587.
Conley v. Mathieson Alkali Wks., 190 U. S. 406.
United States v. Delaware & Hudson Co., 213 U. S. 366, 413.

The word has the same meaning in international law and has been so used and interpreted in numerous instances. In Moore's *Digest of International Law*, Vol. 6, p. 641, it is said:

> "It is well settled that a government may intervene in behalf of a company incorporated under its laws, or under the laws of a constituent state or province. In such case the act of incorporation

> is considered as clothing the artificial person thereby created with the nationality of its creator, without regard to the citizenship of the individuals by whom the securities of the company may be owned. Hence we find in general claims conventions that the submission or settlement uniformly embraces 'all claims on the part of corporations, companies, or private individuals, citizens of the United States,' or of some other government, as the case may be. In other words, the corporation is recognized as having, for purposes of diplomatic protection, the citizenship of the country in which it is created."

And Congress, in legislating with reference to the property of foreign corporations, would be presumed to use the word as it is understood in international law.

In *Murray v. Schooner Charming Betsy*, 2 Cranch 64, 118, it is said:

> "An Act of Congress ought never to be construed to violate the law of nations if any other possible construction remains, and consequently can never be construed to violate neutral rights or to affect neutral commerce further than is warranted by the law of nations as understood in this country."

If, therefore, there could be any doubt as to the sense in which Congress used the word "corporation," in original Section 9 or 9 (a), that doubt would be dispelled when it is seen that in the decisions of the courts and in international law the word has a settled meaning as the legal entity separate and apart from the stockholders.

Nor is the question affected by the decision in *Daimler v. Continental Tyre & Rubber Co.* (1916 2 A. C. 207), except that the case emphasizes the point as to the intent of Congress which we are making. In that case it was held that under the British statute a British company, all of whose stock except one share, was owned by Germans, was an enemy. But that case arose under the British statute before the passage of our "Trading with the Enemy Act," and was particularly called to the attention of Congress when the Trading with the Enemy Act was under consideration with the advice by Assistant Attorney General Warren in a communication to the Chairman of the House Committee that:

> "It is intended by this bill to avoid all the confusion and difficulties which have arisen in England by the attempt on the part of the courts to go behind the corporate charter and corporate entity. *Continental Tyre & Rubber Co. Ltd. v. Daimler Co. Ltd.* (1915), 1 K. B., 893; *Daimler Co. Ltd. v. Continental Tyre & Rubber Co. Ltd.* (1916 House of Lords), 2 A. C. 307." (Hearings before Committee on Interstate and Foreign Commerce on H. R. 4704, p. 96.)

It becomes plain, therefore, by whatever test is applied—the context, the settled meaning of words or the situation before the legislative body—that Congress used the words "corporation" in the original Section 9 and the same section reenacted as Section 9-a, in the ordinary sense.

Such being the case the meaning cannot be stretched or modified upon any imagined policy of Congress, not

expressed in the law. The executive department administering the law cannot mold the statute to meet its views of what might be considered the policy that should, or could have been adopted; nor will the Court so mold the statute. Said Chief Justice Marshall in *Brown v. United States*, 8 Cranch 110, 129:

> "Like all other questions of policy, it is proper for the consideration of a department which can modify it at will; not for the consideration of a department which can pursue only the law as it is written. It is proper for the consideration of the Legislature, not of the Executive or judiciary."

And more recently Mr. Justice Harlan said:

> "The court cannot mold a statute simply to meet its views of justice in a particular case. Having, in the mode indicated, ascertained the will of the Legislative Department, the statute as enacted must be executed, unless found to be inconsistent with the Supreme law of the land." *L. & N. R. R. Co. v. Motley*, 219 U. S. 467.

Under settled rules of construction, therefore, it is clear that by Section 9 (a) a corporation (apart from its stockholders) of a neutral country not doing or having done business in enemy territory is entitled to recover its property seized by the Alien Property Custodian because it is a person (expressly defined to include a "corporation") and is not an "enemy" or "ally of enemy" (as expressly defined).

The appellant, therefore was entitled to recover its property because within the express definition in the Trading with the Enemy Act (Section 9 as originally enacted, numbered 9-a as re-enacted) because it was a

"person" "not an enemy or ally of enemy," the statute admittedly authorizing the recovery of property of any person not an enemy or ally of enemy; and the word "person" being expressly defined to include a "corporation," and an enemy or ally of enemy corporation being expressly defined to be "a corporation incorporated within such (enemy or ally of enemy) territory," or if incorporated elsewhere, "doing business with such territory.

The word "corporation" used in the statutory definition obviously meant the corporate entity and not the stockholders. The contention to the contrary is wholly unjustified by any rules of interpretation of statutes. Not only does the context clearly show the sense in which the word "corporation" is used, but that word had come to have a settled meaning before the enactment of the Trading with the Enemy Act, and was therefore used, of course, by Congress according to the settled meaning.

IV.

The Language of Sub-section (b) of the Amendment of 1920 Clearly Indicates an Intent to Enlarge the Rights of "Enemy" Owners and not to Restrict the Rights of "Non-enemy" Owners.

That the purpose and intent of the enumeration of the eight classes of owners of alien property, given the right to return of property by the post war amendment (Section 9b) to the Trading of the Enemy Act, was to *add to* and *not to restrict* the rights of claimants, is shown not only by a fair reading of the text,

but by the circumstances under which the enactment was passed, the end in view and the conditions which the amendment sought to relieve.

The original trading with the Enemy Act provided broad powers as to the seizure of alien property. But it very carefully provided also (in Section 9), for the recovery by the owner of any property mistakenly seized, that is, where the owner turned out to be not an "enemy" or "ally of enemy" as defined by the law. Thus the rights of "non-enemy" owners were guarded. But much property had been seized which belonged to those who, though coming within the definition of "enemy" or "ally of enemy" were only technically "enemies" (such as an American woman who had married a German, a citizen of one of the newly created states, neutral persons, including corporations, which had merely done business with the enemy, etc.) which it was deemed desirable should not be retained after the war had ended.

The Secretary of State had brought the matter to the attention of Congress and the Attorney General. On May 5, 1920, he wrote the Attorney General with reference to certain property held by the Alien Property Custodian, which could not be released under the law as it then stood, but which the Department felt should not be retained in view of the cessation of hostilities. He stated:

> "The various neutral and allied states whose nationals' property has been taken over by the Alien Property Custodian by reason of their residence in enemy or ally of enemy territory, or

otherwise, for sometime have been pressing for the release of such property."

(66th Congress, 2d Session, Rep. 1089, p. 5.)

On May 21 1920 the Secretary of State wrote the Chairman of the House Committee in charge of the bill with reference to the draft of the proposed law:

> "The draft, it is understood, is largely based on representations from this department made in view of the fact that the Attorney General holds that under the trading with the enemy act in its present form he is unable to release property to owners, who when it was taken over were included, for any reason, in the terms 'enemy' or 'ally of enemy' as used in the act and consequently in spite of strong representations by various neutral and associated governments, it has been impossible to return the property of their nationals, which it would appear this Government should no longer retain. To longer retain property of this character can hardly fail to unfavorably affect the relations of this Government with the Governments concerned, and I am strongly of the opinion that Section 9 of the act should be amended at an early date, so as to permit in proper cases the return of such property."
>
> (Report, p. 7.)

In a communication to the House Committee on Interstate and Foreign Commerce the Attorney General had stated, referring to the draft of a bill to amend Section 9:

> "I am herewith forwarding you a draft of a bill to amend section 9 of the trading with the enemy act, which I believe will provide the relief requested by the Secretary of State. For your convenience, I shall briefly analyze its provisions and

indicate the change which it would make in existing law.

"Section 9 has been divided into subsections. Subsection (a) is identical with the present provisions of section 9 of the trading with the enemy act. It contains the same provisions for relief of any person not an 'enemy or ally of enemy' as those terms are used in that act."

(Report, p. 3.)

The Attorney General also stated in another communication to the Committee:

> "Subsection (b) of the proposed amendment provides in substance, for the return of all *enemy* property, except that held by persons who are in fact *bona fide* subjects or citizens of Germany, Austria or Hungary."
>
> (Report, p. 5.)

The Attorney General had particularly in mind the property of those persons (including corporations by the definitions in the law) who were "enemies" only because "doing business in enemy territory" and stated that there would be permitted the return of property to:

> "Persons whose property was sequestrated because of the fact that they were doing business within enemy territory (provided they are not citizens of enemy countries)."

All these communications referred expressly to the property of those who were "enemies" by the definition of the Trading with the Enemy Act as distinguished from "non-enemies" whose rights were already fully provided for.

These communications were referred to in the report of the House Committee on Interstate and Foreign Commerce (66th Congress, 2d Session, Rep. 1089) and the House Committee stated the purpose of the act to be what had been represented in such communications. The report stated (pp. 2, 3):

> "The reasons for the enactment of the pending measure are clearly set forth in the accompanying communications received from the Attorney General and the Secretary of State."

And so Congress passed the amendment of 1920 to the Trading with the Enemy Act, adding eight classes of owners of alien property who might regain their property and provided that the President might, with or without application therefor, order the return of such property, if he determined that the owner thereof was: (1) a citizen or subject of any nation other than Germany or Austria-Hungary; (2) a woman of a neutral or associated nation who had married a citizen of Germany or Austria-Hungary; (3) an American woman married to a citizen of Germany or Austria-Hungary; (4) diplomatic or consular officers of Germany or Austria-Hungary; (5) a citizen of Germany or Austria-Hungary interned in the United States; (6) a partnership, association or corporation outside the United States entirely owned by citizens of states other than Germany or Austria-Hungary; (7) the Government of Bulgaria or Turkey; (8) the Government of Germany, Austria, or Hungary, or Austria-Hungary.

Each and every paragraph enumerating the eight classes made possible *additional claimants* to property held by the Alien Property Custodian. In some cases the owners could not have claimed before because, though neutral, they had "done business within enemy territory"; in other cases such owners could not have claimed before because they were deemed subjects of enemies. In no paragraph was there any language of negation or limitation of rights already given, nor did the sub-section purport to be exhaustive of the owners of alien property who might secure return of such property.

To make the matter doubly sure, Congress reenacted the earlier Section 9, making it Section 9(a) and reaffirmed the rights of *non-enemies* exactly as they were before. As a question of interpretation of statutes the matter is as plain as if Congress had stated in express words: As to "non-enemies" (defined by the act) their rights shall remain as before; as to "enemies" (defined by the act), whether such because doing business within enemy territory or for other reasons, their rights shall be as now given.

This view as to the purpose and meaning of sub-Section b was again expressed by the Attorney General in one of the earlier cases which arose under subsection (b) (*Opinion of Attorney General, Claim No.* 8425, *Vereinigte Oesterreichische Textilindustrie* A. G.)

In considering a claim for refund by an Austrian corporation (entirely owned by a Czechoslovak corporation) which applied and could apply, if at all, under sub-section (b) only, and denying refund because the

corporation did not bring itself strictly within the words "owned by citizens or subjects of nations other than Germany, etc.," the Attorney General had occasion to point out the intent and effect of sub-section (b) and its contrast with sub-section (a). He said:

> "Second, subdivision (b) is composed of eight particular and specific cases not covered by the general provisions of subdivision (a), and under this subdivision property likewise may be returned."

He then enumerated the eight classes and added:

> "In other words, subdivision (b) of Section 9 includes those *who would not be eligible to receive the return of their property had this subdivision not been enacted and it is enabling in nature, rather than restrictive.*"*

In view of the manifest purpose of Congress, the situation for which relief was intended, and the arrangement and nature of the provisions, can it fairly be contended that because Congress, after the war, *added*, by a separate subsection, a right to a partnership, as-

* This opinion was referred to (as the "Votag" case) and quoted from by the Attorney General in the report to the President, denying the claim of the appellant corporation here. In that report it was sought to distinguish the "Votag" case by reference to further comment in opinion to the effect that "the intent being obvious that there be an investigation of the beneficial ownership * * * and ascertaining the status of the individuals actually owning the stock." But the "intent" referred to, as explained in the opinion, was the intent of subsection (b) in using the words "citizens or subjects" instead of the word "person" found in subsection (a), which had been specifically defined to include a corporation. And the Attorney General held that for this reason Congress did not mean to include a corporation by the words "citizens or subjects" in the particular part of subsection (b) permitting return of property to a corporation "entirely owned by citizens or subjects" of a neutral State.

sociation or corporation outside of the United States, though an enemy, entirely owned by neutrals or citizens of newly created states, Congress must necessarily be taken to have *denied* the right, already given, and contemporaneously reaffirmed, of all other non-American neutral corporations not enemies or allies of enemies?

Such construction is opposed to all sound principles of interpretation. Certainly such implication from the language of subsection (b) is not "clear, necessary and irresistable" (Chief Justice Marshall in *Faw v. Marsteller*, 2 Cranch 10, 23). This is not even an instance of general terms on the one hand and particular words on the other hand, on the same subject and for the same purpose; it is an instance of general terms in one section on one subject and for one purpose, and particular words in another section on another subject and for another purpose.

Nor is this argument as to intent, weakened by the fact that Congress did, in still a third subsection (e), with reference to the allowance of debts, use language that *was* clearly meant to apply to all cases and all claims, as held by this Court in *Banco Mexicana v. Deutche Bank* (Sup. Ct. Advance Opinions 1923-1924, No. 8, p. 230). The language of subsection (e) shows strikingly that where Congress *did* intend to limit or restrict rights, whether given by previous legislation or not, it did so in words, not of *permission* only but of negation, and in words that were plainly all inclusive. The wording of subsection (e), with reference to debts, is as follows:

"nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

Whatever ambiguity might be thought to be here, was resolved by the plain language, about as emphatic, and inclusive a *negative* of rights as words could express.

In subsection (b) there are no words of restriction, but only words of permission; there is no evidence of the negativing of rights, but only the granting of additional rights; there is no indication of limitation of or inconsistency with the previous section 9, but there is plain indication of harmony with section 9 and the re-enacted section 9a. There is every presumption, therefore, that Congress intended to continue the right of a non-enemy neutral corporation expressly given by section 9 and expressly repeated in section 9a, and not to negative or limit the right by its provision as to certain selected corporations in the next succeeding subsection.

V.

The Amendment of 1923 was Merely a Further Extension and Enlargement of Rights to Return of Property, and did not Restrict the Rights of Non-Enemy Corporations Given by the Original Act, or by the Re-enacted Section 9-a.

On March 4, 1923, Congress passed what was known as the Winslow Act (42 Stat. 1511) again amending and

enlarging Section 9 of the Trading with the Enemy Act. That amendment was directed entirely to a partial distribution of all the funds in the hands of the Alien Property Custodian, as was well known at the time. Its principal feature was the return of all the property to enemy claimants who owned not over $10,000 and the return of at least $10,000 of the funds held for all other enemy claimants. Incidentally the amendment also extended, by addition of new classes, the eight classes of claimants provided for in the previous amendment of 1920.

One of the classes so added was the class of corporations incorporated in any country other than Germany or Austria-Hungary where the control of more than 50 per cent of the interest or voting power of such corporations was at the time of seizure, and at the time of return, vested in citizens of nations other than Germany or Austria-Hungary. (Paragraph 11, sub-section (b) of Section 9.)

The purpose of the amendment of 1923 was so clearly to provide for the distribution of the Alien Property Custodian funds to a large number of *additional "enemy" claimants,* that it is not logical to imply from its language any repeal or limitation of the rights of *"non-enemy"* claimants. This is especially true since there are no words in which such limitation can be found, and the act itself re-enacted the original Section 9 making it Section 9-a, and re-stated, in the same terms, the rights of "non-enemy" claimants.

The same reasoning which requires the conclusion that sub-section (b) of amendment of 1920 did not repeal or restrict the rights given in Section 9-a applies

with equal force to sub-section (b) in the amendment of 1923. An interpretation of this amendment, therefore, does not require further discussion.

VI.

The Question of Policy Involved.

The suggestion that the rights of foreign corporations whose property was seized by the Alien Property Custodian are to be governed solely by the citizenship of some of the stockholders, is based upon some assumed or imagined policy of Congress in the Trading with the Enemy Act to seize and hold the property in the United States of foreign corporations, even though not doing business with the enemy, if there was any interest, however slight, of such corporation held by the enemy. Aside from the fact that the very question of the policy of going behind the corporate entity was before Congress, as shown by the hearing on the original bill, and that Congress deliberately used the word "corporation" with its settled meaning, there is a higher policy, more important to our interests, which it is more reasonable to believe Congress intended to adopt in its legislation. This is the policy of recognizing the rule of international law that the corporate entity is entitled to the protection of its government.

There are many American corporations which have large interests abroad. These corporations are entitled to feel that their interests and their protection are not jeopardized by the purchase of a share of stock, which they could not control, by a citizen of some other

country. The recognition in international law of the corporate entity of American corporations is a matter that we have insisted on many times in our diplomatic relations. To upset this rule now, and to announce to other nations that in our dealings with the property of their citizens we ignore the corporation as a citizen, would be to invite a like upsetting of the rule by foreign nations having the property of our corporations in their territory. The Trading with the Enemy Act dealt with the property of nationals of many neutral states. It had an international aspect, and aside from every other consideration, it should be construed in harmony with well settled rules of international law and not in conflict with them. (*Murray v. Schooner Charming Betsy*, 2 Cranch. 64, 118.)

The appellant here is a Swiss corporation. The treaty with Switzerland of 1850, Articles 1 and 2 (which is to be liberally construed, *Hautenstein v. Lyhan*, 100 U. S. 483) seeks to give protection to Swiss nationals in the United States to the same extent that American nationals are given protection in Switzerland. The language is:

> "No pecuniary or other more burdensome conditions shall be imposed upon their residence or establishment or the enjoyment of the above mentioned rights than shall be imposed upon citizens of the country where they reside nor any condition whatever to which the latter shall not be subject."

By international law a "citizen" of Switzerland would include a corporation. There is not to be as-

sumed in the legislation of Congress with reference to foreign property in the United States any intent to be inconsistent with this treaty—certainly unless plainly and unmistakably expressed.

The desirability of the recognition of the corporate entity, separate and apart from the stockholders, bondholders or creditors, is not any longer open to question. It has long since become a settled policy of law. The reasons for it need not now be re-stated. The confusion resulting from any other rule has long been recognized. If a corporation means something else than the legal entity which, in law, is the only owner of its property, and if its nationality is not to be determined by its place of incorporation, but by the residence of some, a large part or a small part, of its stockholders or bondholders or creditors, where is the line to be drawn, and what is to be the test? The difficulty is apparent.

In the case of the particular corporation, appellant here, at the time its bill was filed, the majority ownership of its stock was in the hands of Swiss, Italian and English shareholders, though at the time of seizure less than a majority was so held (Rec. p. 5). The bonds of the corporation were largely in the hands of neutrals, as set forth in the bill (49 per cent Swiss, Italians or aliens, and 4 per cent unknown) and at the time of the filing of the bill citizens of Switzerland owned over 59 per cent. (Rec. p. 5.) According to the allegations of the bill, which are admitted, the bondholders have the real substantial interest in the assets of the corporation by reason of the impairment of its capital. (Rec. p. 6.)

The only safe rule, universally acknowledged as

proper, is the simple one of the recognition of the corporate entity. This is the rule we believe it is manifest Congress intended to adopt, and did adopt in its legislation as to non-enemy property.

VII.

The Seizure was Wrongful and should be set aside as not in Accordance with the Provisions of the Act.

The power of the President, exercised through the Alien Property Custodian, under the Act, is very broad; the only redress which an injured party has is a suit under Section 9. This proceeding is said to be analogous to the common procedure in garnishment.

> "The summary power to sequester property depends upon the protection necessary to secure the United States in the assertion of its eventual right by capture; the property must be held in custody until any dispute shall be determined, just as is done in replevin or attachment. In the case of chattels or tenements, this involves possession *ad interim* of the property itself, since otherwise the chattel might be delivered or the profits collected and disbursed. That would make ineffectual any final decree of title." (Learned Hand, J. in *Simon v. Miller*, 298 Fed. 520.)

But, just because the procedure under the Act is similar to that of garnishment, it follows that the form of law prescribed must be complied with and that what is done outside thereof is ineffectual for any purpose. Here, the finding that the four Francks had an interest in the stock seized, was a nullity because the fact was at that time that the title was in a wholly differ-

ent person, to wit, the appellant corporation. True, the custodian declined to recognize the legal existence of appellant, because he suspected that the Francks were masquerading under the form of the corporation. He happens to have been entirely wrong and the sole question is as to the consequences of his error.

It has been decided in the case of *Simon v. Miller, supra,* that on this state of affairs, the capture must be set aside before the defendant may assert any further defenses whatsoever:

> "However, I need not rely upon either of these points. As I have already said, the Custodian's power to seize property which may not in the end prove to be of enemy character, depends solely upon the right of the United States to attach and impound what might otherwise be removed or dissipated. It is an interlocutory remedy designed to make effectual the capture of true enemy property. Central Trust Co. v. Garvan, *supra.* When the seizure is unlawful the petition under Section Nine *does no more than establish the plaintiff's right and the consequent illegality of the capture.* It is analogous to the violation of an attachment levied upon the goods of a third person. If the suit may be answered by an independent claim against the plaintiff the seizure itself is legalized, the defendant is put in exactly the same position as though the seizure had been valid. To pursue the analogy of attachment, it would be as if the creditor might support an attachment of A's property for the debt of B, by an independent claim against A. *The petition, while indeed not possessory, is similar to a possessory suit in this, that until the original wrong has been righted the defendant may not undertake to pursue other claims against his victim. Any-*

> *thing less would be a premium upon lawless seizures by the sovereign, the fountain of justice.* The defendant must therefore work out his right as captor of Albert's property after he has restored the plaintiff to the position he would have occupied but for the wrongful seizure." (*Simon v. Miller, supra.*)

But the Government replies that, however great the original wrong, this appellant has not the legal capacity to sue. To maintain this position would be to place, as Judge Hand said,

> "a premium upon lawless seizures by the sovereign, the fountain of justice,"

and to inject into this inquiry a wholly new element, namely, the nationality of the claimant. Once, again, it will not be forgotten that there is no finding that the claimant is, or was, an enemy and the Alien Property Custodian is estopped from raising that question now as an after-thought and as a defense interposed in a case which would otherwise be without defense.

Indeed, the court of its own motion may examine the question and, the illegality of the seizure becoming apparent, order the property restored to the original owner. Such was the course followed by Story, J., in *Brown v. United States,* 8 Cranch, 110.

That the seizure was unlawful and voidable, if not void, seems clear. In the case of *Brown v. United States, supra,* the rules governing the seizure and confiscation of enemy property on land were stated. It was said that there is no international usage which acts on the property itself; there is no general policy

to be followed; there is nothing to guide the executive, except the *legislation* which may be in existence, in determining in what way and to what extent property of aliens may be seized and held. In the absence of legislation, there can be no seizure and holding and the property must be returned. When there is legislation, it must be examined to see if it includes the property in question, and if it does not, it cannot be so included.

The relevant provision of "Trading with the Enemy" reads:

> "(c) If the President shall so require, any money or other property, including * * * choses in action and rights and claims of every character and description, owing or belonging to or held for, by, on account of or on behalf of, or for the benefit of an enemy or ally of enemy, not holding a license granted by the President hereunder, which the President after investigating shall determine is so owing or so belongs or is so held shall be conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian."

It will certainly not be contended that this provision of the Act was complied with or that the person who was known to be the owner of this stock, to wit, appellant, was found or determined to be an enemy.

CONCLUSION.

It is therefore submitted that, as the appellant corporation was not an "enemy" or "ally of enemy" as those words are defined in the Trading with the Enemy Act, it was clearly entitled, under subsection a of Section 9 of the Act, to sue and recover the property belonging to it, seized and held by the Alien Property Custodian, under the mistaken belief that it was the property of others who alone were declared enemies.

Respectfully submitted,

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